THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.15696 OF 2004

DATE: 20th JUNE 2006

Between:

1. Mr.K.S.Liu, son of late Mr.LIU Yuan,
   aged 46 years, Occ: business,
   R/o 3-6-276, Himayatnagar,
   Hyderabad and another.

.... Petitioners.

And

1. A.P. Co.op. Tribunal, Hyderabad,
   rep. by its Registrar and 4 others.

.... Respondents.

* * *

ORDER:

The only controversy involved in this writ petition is whether an appeal under Section 76 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'), is maintainable before the A.P. Cooperative Tribunal, Hyderabad, against an order passed by the Primary Authority (Co-operative Sub-Registrar/Sale Officer) under Section 70 of the Act.

2. Though the attention of the Tribunal was drawn to Section 76 of the Act, instead of entertaining the appeal filed against the order in Claim Petition No.2 of 2004 in E.P.No.98/94A before the Primary Authority, the Tribunal dismissed the appeal holding that it is not maintainable in view of sub-Rule 21(c) of Rule 52 of the A.P.

Cooperative Societies Rules and the only remedy available to the petitioners is to file a civil suit and work out their remedies.

3. Before the Act was amended there was no tribunal constituted in the State of Andhra Pradesh. After amendment of the Act, Tribunal was constituted and Section 76 was amended in 2001. Therefore, sub-Rule 21(c) of Rule 52 of the Rules was being invoked and suits were being filed. But, after the constitution of the tribunal, as per Section 76 of the Act an appeal is specifically provided. May be the Rules are not properly amended, but once the Act itself is amended, any Rules made thereunder either prior or after the amendment should sub-serve the substantial provision. Hence, sub-Rule 21 (c) of Rule 52 of the A.P. Cooperative Societies Rules, 1964, has to be read down. Therefore, the view taken by the Tribunal that no appeal lies against the impugned order under Section 76 of the Act is misconceived.

4. The writ petition is accordingly allowed and the matter is remanded to the A.P. Cooperative Tribunal, Hyderabad, and the Tribunal shall entertain and dispose of the appeal under Section 76 of the Act. No costs.

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C.V.RAMULU, J.

Date: 20th June 2006.
BSB